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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA WILHELM, :
Plaintiff :
 :
v. : 01-CV-1057
COMMONWEALTH OF PA, et al., :
Defendants :

FILED
HARRISBURG

JAN 28 2003

MARY E. DANDY, CLERK
Per SLS
Deputy Clerk

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

TESTIMONY OF ROBERT HICKES and MICHAEL SIMMERS

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: September 9, 2002

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:

NATHAN C. PRINGLE, JR., Esquire
For - Plaintiff

SUSAN J. FORNEY, Esquire
For - Defendants

Vicki L. Fox, RMR
Official Reporter

I N D E XDirect Cross Redirect RecrossPlaintiff's Witnesses

4. Robert Clair Hickes

By Mr. Pringle 4 -- -- --

By Ms. Forney -- 14 -- --

5. Michael Simmers

By Mr. Pringle 15 -- -- --

E X H I B I T SPlaintiff ExhibitsIntroducedAdmitted

69. Department Directive Internal
Investigation.

6

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Hickes - Direct

1 MR. PRINGLE: Next, I would I like to call
2 Lieutenant Colonel Hickes.

3

4 ROBERT CLAIR HICKES, called as a witness, being
5 duly sworn, testified as follows:

6

7 THE CLERK: Would you please state your name,
8 please?

9 A Robert Clair Hickes.

10 THE CLERK: Thank you.

11

DIRECT EXAMINATION

12 BY MR. PRINGLE:

13 Q Lieutenant Colonel Hickes, Colonel Hickes, are you
14 under subpoena here?

15 A Yes, I am.

16 Q Can you tell us what your position is currently?

17 A I am the Deputy Commissioner of Staff for the
18 Pennsylvania State Police.

19 Q Using that chart, would you show us where your position
20 would be?

21 A My position is here.

22 THE COURT: Here for the record is what block?

23 A The block on the right-hand side as you face it.

24 THE COURT: What is it labeled?

25 A Deputy Commissioner of Staff.

Hickes - Direct

1 THE COURT: Okay.

2 BY MR. PRINGLE:

3 Q Could you tell us what previous positions you held
4 within the State Police?

5 A Immediately prior to Deputy Commissioner of Staff, I
6 was the Director of the Bureau of Liquor Enforcement from
7 1995 until my appointment to the Deputy Commissioner of Staff
8 in October of 1998.

9 Prior to that, I was the Deputy Commissioner of
10 Operations from April of 1991 until February of 1995. Prior
11 to that, I was the Director of the Bureau of Professional
12 Responsibility from 1998 to 1991. I was Director of the
13 Bureau of Training and Education from 1997 until the end of
14 1997.

15 Prior to that, I was the Director of the
16 Communications Division within the Bureau of Technical
17 Services at the Department Headquarters. And prior to that,
18 I had various field appointments either Station Commander or
19 Patrol Lieutenant, Staff Lieutenant, Supervisor and Trooper.

20 Q Are you familiar with the rules governing the
21 acceptance and issuance of complaints within the Pennsylvania
22 State Police?

23 A Generally speaking, yes.

24 Q Are there regulations that govern this?

25 A I believe Administrative Regulation 4-25 governs the

Hickes - Direct

1 Bureau of Professional Responsibility regulations. It has
2 been some time since I reviewed that.

3 (Department Directive Internal Investigation was
4 introduced as Plaintiff Exhibit 69.)

5 BY MR. PRINGLE:

6 Q I am going to present you with Plaintiff Exhibit 69.
7 Are you familiar with what has been labeled Exhibit 69?

8 A This is Administrative Regulation 4-25. The subject is
9 Internal Investigations.

10 Q I believe you still have up there a document labeled
11 Plaintiff Exhibit 36. That would be the September 13, 1999
12 memorandum from Barbara Wilhelm to Lieutenant William Horgas?

13 A Yes.

14 Q I would like you to take a look at that document,
15 please.

16 A (Witness complies.)

17 Q Tell me when you are finished reviewing it.

18 A Okay.

19 Q Having reviewed this document, would you recognize this
20 -- based on your experience being a Director of the Bureau
21 of Professional Responsibility and your knowledge of the
22 internal regulations governing this, would you recognize this
23 as a complaint?

24 A There are issues raised particularly in paragraph three
25 that involve violations of Department rules and regulations

Hickes - Direct

1 so it could be construed as a complaint.

2 Q And if it was presented to you as a complaint, would
3 you have any responsibilities to acknowledge receipt of the
4 complaint under the rules?

5 MS. FORNEY: Object to the form of the question,
6 Your Honor.

7 THE COURT: Rephrase it.

8 BY MR. PRINGLE:

9 Q What are the requirements under the regulations
10 regarding the acknowledgment of receipt of a complaint?

11 A I would have to review the regulations again. I don't
12 know off the top of my head.

13 Q I would like to refer you to page six -- I'm sorry --
14 page five of this document. The paragraph is 25.08. Tell us
15 what the title of that paragraph is.

16 A 25.08 is Duties and Responsibilities.

17 Q Under (b), what specific responsibilities does it
18 address?

19 A The Director of Bureau of Professional Responsibility
20 shall assign and coordinate all investigations.

21 Q You don't have to read all of that. I would like you
22 to turn to page six and go to paragraph five and read that,
23 please.

24 A Furnish an acknowledgment of receipt in writing to the
25 complainant. Refer to appendage three.

Hickes - Direct

1 Q After reading that document, does that refresh your
2 recollection as to what the requirements are when a complaint
3 is received?

4 A Yes. The complainant would get an acknowledgment that
5 the complaint was received.

6 Q Is that optional?

7 A No.

8 Q I believe you have up there a copy of a document
9 labeled Plaintiff Exhibit 40.

10 A All right.

11 Q I would like you to take a look at that and tell me
12 when you are finished reviewing it.

13 A (Witness complies.) Okay.

14 Q After reviewing this document, if you had received this
15 as a part of the Bureau of Professional Responsibility, would
16 you recognize this document Plaintiff Exhibit 40, the January
17 3rd, 2000 letter from -- memorandum from Barbara Wilhelm to
18 Major Morris, would you recognize that as a complaint?

19 A The document discusses use of compensatory leave for
20 enlisted personnel. It makes an allegation or an implication
21 that there is disparate treatment. There is the possibility
22 that a complaint is in this.

23 I really don't know from the text of this whether
24 there is or not, but I would clearly need more information.

25 Q Had you received this and you took the position that

Hickes - Direct

1 you needed more information, what course of action would you
2 take to get that information?

3 A Because it deals with the disparate treatment between
4 males and females, I would have gone to the Equal Employment
5 Opportunity Officer and presented that information to that
6 individual and allowed that person to make the foray back to
7 the individual who wrote the letter and then go on their
8 advice.

9 Q So that you would have someone make contact with the
10 complainant?

11 A Yes.

12 Q When the Bureau of Professional Responsibility receives
13 a complaint, is there a legitimate reason for not
14 acknowledging the receipt of a complaint?

15 A Not that I'm aware of.

16 Q Let me ask you this: In what form must the complaint
17 be made under the regulations, or is there a particular form
18 that a complaint has to be made in order to be acknowledged?

19 A Again, I would have to review the entire regulation to
20 find out, but I believe that a complaint generally can be
21 made in any form by a citizen.

22 Complaints within the agency, it was I would say
23 preference or policy -- although it may not have been written
24 -- that those complaints should be written by the individual
25 who was lodging the complaint.

Hickes - Direct

1 Q If I am a member -- if I am an employe of the
2 Pennsylvania State Police and I wanted to make a complaint,
3 could I do it orally?

4 A We would have requested that that complaint be reduced
5 to writing and submitted that way.

6 Q So that if I came to you with an oral complaint,
7 someone would direct me to put it in writing?

8 A Correct.

9 Q But the submission of that complaint orally is not the
10 stated problem?

11 A It is a problem if it is orally for the purposes of BPR
12 investigations. From my experience in the Bureau of
13 Professional Responsibility, particularly within the
14 Department, we wanted the individual who was lodging the
15 complaint to reduce that complaint to writing.

16 Q But if I submitted a complaint to you and didn't do it
17 in writing, what would your directions to me be?

18 A Someone would come back to you and said you have lodged
19 this complaint. We don't know exactly what you are
20 complaining. We want to see it in writing. Would you reduce
21 it to writing? Here is the appropriate form.

22 Q Is it the investigator's responsibility to make sure
23 that the complaint is in the proper form?

24 A Is it the investigator's responsibility?

25 Q Yes.

Hickes - Direct

1 A No. Generally speaking, the investigator is assigned
2 to the investigation after the complaint has been received
3 and logged in and assigned to that person. I don't believe
4 it is their responsibility to have the complainant change the
5 format on it.

6 Q I am going to refer you to Plaintiff Exhibit 69, which
7 is the Internal Investigations Regulation. I specifically
8 refer you directly to page eleven.

9 Can you tell us what it says at the top of the
10 page?

11 A Investigator: Investigators shall --

12 Q And there is a list of various things that the
13 investigator shall do?

14 A Correct.

15 Q And it runs over into page twelve?

16 A Correct.

17 Q And could you read paragraph twelve please on page
18 twelve?

19 A When applicable, transcribe the complaint on the
20 complaint verification form SP 1-108, appendage twelve and
21 obtain the complainant's signature.

22 Q Do you read that to mean that the investigator shall
23 make sure that the complaint is transcribed in the proper
24 form?

25 A This aspect of Administrative Regulation 4-25 was

Hickes - Direct

1 enacted after I left the Bureau of Professional
2 Responsibility. This isn't a complaint worksheet form that I
3 dealt with, which was an SP 3-101 I believe at the time.
4 This a complaint verification form that has been used for
5 both -- I am assuming both enlisted -- both employees and
6 non-employees of the Department to verify that the information
7 that they called in and complained about was in fact what
8 they complained about.

9 In fact, if it is a verbal complaint, reduce it to
10 writing I believe.

11 Q I am sorry. I missed the last part.

12 A I believe this is the form that if someone calls in a
13 complaint, they are recontacted and have those individuals
14 reduce this to writing whether they are an employee of the
15 Department or not. I believe that is what this refers to.

16 Q That would be the investigator's responsibility?

17 A That would be, yes, according to AR 4-25.

18 Q Are you familiar with the term maximum adjudication
19 date?

20 A Generally speaking, yes.

21 Q What is your understanding of that?

22 A Again, at some point after I left the Bureau of
23 Professional Responsibility, there was an agreement with the
24 Pennsylvania State Troopers Association that complaints
25 against members needed to be adjudicated within a date

Hickes - Direct

1 certain or a time certain.

2 If it was not adjudicated within that time frame,
3 opportunity to discipline in certain ways would pass.

4 Q If the maximum adjudication date had passed, would they
5 be still able to complete the investigation or reach an
6 adjudication? Was there any bar to them completing that?

7 A Not that I am aware of, but I am not sure.

8 Q The only bar would be that they could not take
9 disciplinary action against the employee?

10 A I am not familiar enough to be able to say with
11 certainty what the dates are or what they can or cannot do.

12 Q So we are clear on that -- so I am clear on your
13 answer, after the maximum adjudication date passed, are they
14 permitted to impose disciplinary action against the employee?

15 A I believe that -- and I say this advisedly -- I would
16 have to check with chief counsel. I believe that dismissal
17 is still an option. But I think that short of dismissal, I
18 believe they are not allowed to discipline to certain
19 degrees. But, again, I am not certain what the regulations
20 are on that.

21 MR. PRINGLE: I have no further questions.

22 THE COURT: Cross.

23 MS. FORNEY: Thank you, Your Honor.

24

25

Hickes - Cross

1

CROSS EXAMINATION

2

BY MS. FORNEY:

3

Q Lieutenant Hickes, you mentioned in your testimony the
4 Pennsylvania State Troopers Association. What is that,
5 please?

6

A The Pennsylvania State Troopers Association is the
7 bargaining unit that represents members of the Pennsylvania
8 State Police from the rank of Trooper through the rank of
9 Major for contract negotiations, arbitration and things along
10 those lines.

11

Q Is discipline also a subject that is negotiated with
12 the Pennsylvania State Troopers Association?

13

A Yes, it is.

14

THE COURT: Ms. Forney, can you move the
15 microphone closer to you, please?

16

MS. FORNEY: No further questions, Your Honor.

17

THE COURT: Redirect?

18

MR. PRINGLE: No redirect, Your Honor.

19

THE COURT: You may step down, sir. Is Colonel
20 Hickes excused?

21

MR. PRINGLE: Yes, he is.

22

MS. FORNEY: Yes.

23

THE COURT: You are excused.

24

MR. PRINGLE: At this time, Your Honor, I would
25 like to call Captain Michael Simmers.

Simmers - Direct

1 MICHAEL SIMMERS, called as a witness, being duly
2 sworn, testified as follows:

3

4 THE CLERK: Would you state your name, please?

5 A Michael Dennis Simmers.

6

DIRECT EXAMINATION

7 BY MR. PRINGLE:

8 Q Are you under subpoena today, Captain Simmers?

9 A Could you speak up, please? I have a little hearing
10 deficit. I apologize.

11 Q Are you under subpoena today, Captain Simmers? Are you
12 under subpoena today?

13 A Am I?

14 Q Under subpoena.

15 A Yes, sir; I am.

16 Q Were you ever a member of the Legislative Affairs
17 Office?

18 A Yes, sir; I was.

19 Q During what time period were you a member of the
20 Legislative Affairs Office -- on staff of the Legislative
21 Affairs Office?

22 A That would have been 1997 through 2000 I believe, sir.

23 Q During that period of time, were you a friend of
24 Lieutenant Colonel Thomas Coury?

25 A Yes, sir; I was.

Simmers - Direct

1 Q Would you describe for us -- well, tell us how long you
2 have been friends.

3 A I have known Colonel Coury since approximately 1968
4 when we were Troopers stationed in the field. I was at
5 Phillipsburg, and he was at Clearfield. That is when I first
6 met him, sir.

7 Q And you have been friends since then?

8 A Yes, sir. We have been stationed at various times in
9 our career together, sir.

10 Q Do you socialize together outside of working hours?

11 A On occasion.

12 Q Can you describe how you socialize?

13 A We would visit each other's homes periodically maybe
14 one or two times a year, our wives, along those lines.

15 Q Did you travel together?

16 A Pardon me?

17 Q Did you travel together?

18 A Travel together? Not really, sir.

19 Q Did you go to parties together?

20 A Yes, sir.

21 Q How often did that happen?

22 A When there would be a special occasion or a retirement
23 function or something along those lines, we might attend it
24 together.

25 Q Would you describe your friendship as good friends?

Simmers - Direct

1 A Yes, sir.

2 Q Were you friends with Colonel Paul Evanko?

3 A Yes, sir.

4 Q How long have you been friends with him?

5 A I have known Colonel Evanko for approximately twenty
6 years I would say when we were first stationed together in
7 Troop H Harrisburg probably about 1982.

8 Q I'm sorry. I want to go backwards. With respect to
9 Lieutenant Colonel Coury, are you still friends with him?

10 A With Colonel Coury, yes, sir.

11 Q And are you still friends with Colonel Evanko?

12 A Yes, sir.

13 Q Are you familiar with -- were you aware that Barbara
14 Wilhelm had filed some complaints against you?

15 A When I was advised by Corporal Rain I believe it was, I
16 was advised by him over the phone, and then I was aware of
17 it. Yes, sir.

18 Q Did Corporal Rain advise you that he was told to
19 contact you by Lieutenant Colonel Coury or pursuant to
20 Lieutenant Colonel Coury's orders?

21 A No, sir.

22 Q Did you have any discussion with Lieutenant Colonel
23 Coury regarding any complaints made against you by Ms.
24 Wilhelm?

25 A No, sir.

Simmers - Direct

1 Q Are you familiar with the term -- does the term push
2 people's buttons, pushing people's buttons mean anything to
3 you?

4 A Yes, sir.

5 Q What does that mean to you?

6 A It's basically a term when someone would want to get a
7 rise out of someone in a joking manner.

8 Q Are you aware of any occasions when Ronald Plesco tried
9 to push Ms. Wilhelm's button?

10 A Yes.

11 Q Would you describe that for us, please?

12 A I can't give you the exact date and time. I know --

13 MS. FORNEY: I object to this line of
14 questioning. It is not relevant.

15 THE COURT: Approach the bench.

16 (The following discussion was had at sidebar:)

17 THE COURT: I have two questions. How does he
18 know unless it's hearsay? And the other one is: What is the
19 relevance?

20 MR. PRINGLE: He knows because he personally
21 observed the instance that he is going to describe. It is
22 relevant because their position is that Barbara Wilhelm did
23 not communicate or -- I suspect that Major Miller will
24 testify that Barbara Wilhelm refused to communicate with
25 Ronald Plesco. We are addressing the issue as to why she did

Simmers - Direct

1 not communicate with Ronald Plesco.

2 THE COURT: Okay. That is relevant.

3 (End of discussion at sidebar.)

4 BY MR. PRINGLE:

5 Q Would you answer the question, please?

6 A Regarding the pushing of buttons?

7 Q Yes.

8 A It was during a period of time when in the office -- in
9 the new office when I believe it involved --

10 THE COURT: Wait a minute. I think, first of all,
11 we better establish the basis for his knowledge to make sure
12 it is of his own personal knowledge and not hearsay.

13 BY MR. PRINGLE:

14 Q How would you know whether or not Mr. Plesco pushed Ms.
15 Wilhelm's buttons?

16 A It was involving --

17 Q How would you know? Did you observe it? Did you hear
18 about it?

19 A Through Mr. Plesco, yes, sir.

20 Q You didn't personally observe it? Did you personally
21 observe it?

22 A I heard it.

23 THE COURT: What do you mean you heard it?

24 A I'm sorry, ma'am?

25 THE COURT: Did you hear it as a result of someone

Simmers - Direct

1 telling you it happened, or did you personally hear it?

2 A Ron Plesco and I had discussed it.

3 THE COURT: It's hearsay.

4 MR. PRINGLE: I have no further questions.

5 THE COURT: Cross.

6 MS. FORNEY: Nothing, Your Honor.

7 THE COURT: You may step down.

8 A Thank you.

9 (Whereupon, the proceedings requested to be
10 transcribed were concluded.)

11 I hereby certify that the proceedings and evidence
12 are contained fully and accurately in the notes taken by me
13 on the trial of the above cause, and that this copy is a
14 correct transcript of the same.

15

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Vicki L. Fox RMR

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Vicki L. Fox, RMR

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Official Reporter

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